


Removal of Boundary Markers on Sebatik Island: Legal Implications for Regional Sovereignty and Protection of Border Communities

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Abstract

Introduction: Borders represent a manifestation of state sovereignty. The relocation of boundary markers between Indonesia and Malaysia on Sebatik Island without formal agreement violates international law. Such actions may alter legally recognized territorial boundaries and thus constitute a breach of sovereignty, potentially leading to serious legal implications.

Purposes of the Research: The purpose of this study is to analyze the legal consequences of relocating boundary markers between nations, particularly between Indonesia and Malaysia on Sebatik Island. It also examines the implications for territorial sovereignty, bilateral relations, and the provisions of international law governing officially recognized and binding state borders.

Methods of the Research: This research is a normative legal research "legal research" is a study of documents (using legal material sources such as laws and regulations, court decisions, legal theories and or opinions of scholars). In simple terms, this type of research is also called doctrinal legal research, literature or document studies.

Findings of the Research: The study found that unilateral stake removals not only violate international law, but also threaten the economic and social rights of border communities, as well as weaken Indonesia's bargaining position in bilateral negotiations. In addition, weak surveillance in the border area also allows for unilateral transfers by interested parties.

Keywords: Border Law; Stake Transfer; Territorial Sovereignty; Border Communities.

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INTRODUCTION

The most important manifestation of territorial sovereignty is the border. To the extent that the border is expressly recognized by treaty or is generally recognized without an express declaration, then the border is part of a state's right to its territory. The territorial boundaries of a country occupy an important position from geographical, legal and political aspects. Geographically, territorial boundaries mark the area of a country's territory that includes land, oceans and air above it¹.

Territorial boundaries serve as functional representations of a system that deals with the distinction between rights and obligations in the environmental order. The creation of various social groups, including those based on language, culture, religion, demographics, customs, laws, politics, traditions, administration, jurisdiction, and others, creates a gap in

¹ Budi Hermawan Bangun, "Konsepsi Dan Pengelolaan Wilayah Perbatasan Negara: Perspektif Hukum Internasional," *Tanjungpura Law Journal* 1, no. 1 (2017): 52-63.

rights and obligations. Territory in the environmental order is essentially an object that creates a gap in rights and obligations.²

Law Number 43 of 2008 regulates the sovereign territory and jurisdiction of the Unitary State of the Republic of Indonesia as well as matters related to the management of Indonesia's territorial boundaries. Law Number 43 of 2008 concerning State Territories was passed to affirm the sovereignty of the Unitary State of the Republic of Indonesia as an archipelagic state with archipelago, both for its own territory and for sovereign rights outside its sovereign territory, such as the Exclusive Economic Zone, the Continental Shelf, and Additional Zones. This law also regulates certain authorities in the management and utilization of the territory in order to realize the welfare and prosperity of the Indonesian people, in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia.³ So far, the Memorandum of Understanding (MoU) and agreements on the determination of territorial boundaries between countries, regulate the determination of land and sea boundaries between the Unitary State of the Republic of Indonesia and other countries. The legal basis for the land boundary between Indonesia and Malaysia is the 1973 MoU which is oriented towards the London Treaty made by the Netherlands and the British while still colonizing Indonesia and Malaysia. This MoU regulates the boundaries of Indonesia's territory of Malaysia which is divided into 2 regions, including: (1) Region II with the boundary sign B2000-B2500 (2) Region III with the boundary sign C 500 – C 600.⁴

As a result of the installation of new stakes in areas 1 and 2, Indonesia lost about 2.16 km of land in Seberang Village, Sebatik Island, Nunukan Regency, North Kalimantan. A total of 44 residents lost their land because their land, which is mostly agricultural, entered Malaysian territory. Not only the land of residents entered the territory of Malaysia, but the road access to the sub-district office of the Sebatik region also entered the border area so that those who wanted to deal at the sub-district office had to become illegal immigrants as far as 30 meters.⁵ Although borders are supposed to be a clear dividing line, in practice, territorial boundaries are often a complex arena of dispute and negotiation. The case of the removal of stakes on Sebatik Island is a clear example of how the unclear boundaries can trigger conflicts and legal uncertainty. So the purpose of this study is what are the legal implications of unilateral stake removal on Indonesia's territorial sovereignty and the rights of border communities, and what are the effective legal mechanisms to prevent and resolve border disputes in the future?.

METHODS OF THE RESEARCH

This study uses normative legal research methods. Normative Legal Research or in English known as "*legal research*" is the study of documents (using legal sources such as laws and regulations, case approaches, court decisions, legal theories and/or the opinions of scholars). In simple terms, this type of research is also called doctrinal legal research, literature or document studies.⁶

² Suryo Sakti Hadiwijoyo, *Batas Wilayah Negara Indonesia: Dimensi Permasalahan Dan Strategi Penanganan* (Yogyakarta: Gava Media, 2009), p.42.

³ Muthia Septarina, "Sengketa-Sengketa Perbatasan Di Wilayah Darat Indonesia," *Al-Adl: Jurnal Hukum* 6, no. 11 (2014): 1-8, <https://doi.org/10.31602/al-adl.v6i11.195>.

⁴ Saru Arifin, *Hukum Perbatasan Darat Antar Negara* (Jakarta: Sinar Grafika, 2022), p. 15.

⁵ Rachmawati, "Patok Batas Negara Di Sebatik Bergeser, Ke Kantor Camat Harus Lewati Wilayah Malaysia," *Kompas.com*, 2020, <https://regional.kompas.com/read/2020/09/05/07270001/patok-batas-negara-di-sebatik-bergeser-ke-kantor-camat-harus-lewati-wilayah?page=all>.

⁶ Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2002), p. 13.

RESULTS AND DISCUSSION

A. The Removal of The Boundary Markers Agreed Upon by The Two Countries Is Classified as A Form of Violation of The Country's Borders

State boundaries in the study of international law are fundamental elements that determine the area of jurisdiction, sovereignty, and international recognition of the existence of a country. Therefore, any form of violation of state borders, whether in the form of unilateral removal of stakes or change of coordinate points without the official consent of both countries, is a violation of the internationally recognized principle of state sovereignty.⁷ The determination of territorial boundaries between countries in international law is based on various principles such as *uti possidetis juris*, self-determination, and provisions contained in bilateral treaties and treaties. In the case of Indonesia and Malaysia, the determination of land boundaries in Kalimantan has its roots in the colonial agreement between the Netherlands and the United Kingdom, which was later codified in a Memorandum of Understanding (MoU) in 1973. The MoU is a binding legal basis for the two countries in resolving the issue of territorial boundaries.⁸

Nevertheless, practice on the ground shows that there are still many cut-offs that are not fully agreed upon, or are subject to stakes, either due to technical factors such as inaccuracies in mapping or due to certain strategic interests. The removal of the stake without consultation and mutual agreement raises serious legal problems, because it has the potential to violate the principle of *pacta sunt servanda*, which is the principle that every valid agreement must be implemented in good faith by the parties. Even under the 1969 Vienna Convention, boundary agreements cannot be revoked simply because of a fundamental change in circumstances (*rebus sic stantibus*), as long as the agreement concerns the determination of territorial boundaries.⁹ Furthermore, the removal of stakes without a valid legal basis can lead to real consequences on the ground, including loss of territory, disruption of access to border communities, and potential social and diplomatic conflicts. As happened on Sebatik Island, North Kalimantan, where the removal of stakes caused part of Indonesia, including agricultural land and public facilities, to fall under Malaysia's administrative territory. This action not only violates aspects of international law, but also has a direct impact on the rights of citizens and the territorial integrity of the Republic of Indonesia.¹⁰ The removal of stakes in this context is a border between countries that has been agreed bilaterally, if carried out without re-agreement and legal procedures, can be expressly qualified as a form of violation of state boundaries according to international law. Such violations have the potential to cause bilateral tensions, disrupt regional stability, and injure the basic principles of relations between countries based on respect for territorial integrity.¹¹ Thus, the removal of boundary markers that are not based on official agreements and not through legal mechanisms regulated in international agreements is a serious violation of international law, in order to maintain the stability of

⁷ Suryo Sakti Hadiwijoyo, *Perbatasan Negara Dalam Dimensi Hukum Internasional* (Yogyakarta: Graha Ilmu, 2011), p. 69-70.

⁸ Dhia Fadlia, St Ulfah, and Muhammad Zulkifli Muhdar, "Kerjasama Indonesia Dan Malaysia Terhadap Penentuan Batas Wilayah Dalam Perspektif Hukum Internasional," *Qawaniin Jurnal Ilmu Hukum* 2, no. 1 (2021): 1-17, <https://jurnal.fh.umi.ac.id/index.php/qawaniinjih/article/view/340>.

⁹ Arifin, *Hukum Perbatasan Darat Antar Negara*, p. 117.

¹⁰ Mohamad Wioldan Akbar, Edy Saptono, and Makmur Supriyatno, "Kerjasama General Border Committee Indonesia-Malaysia Dalam Menjaga Perbatasan Darat," *Jurnal Diplomasi Pertahanan* 5, no. 2 (2019): 1-10, <http://jurnalprodi.idu.ac.id/index.php/DP/article/view/412/395>.

¹¹ Esti Argarani, "Strategi Pemerintah Indonesia Era JOKOWI-JK Dalam Penyelesaian Lima Titik Outstanding Boundary Problems (OBP) Sektor Timur Ri-Malaysia Di Kalimantan Utara" (Universitas Kristen Satya Wacana Salatiga, 2018), <https://repository.uksw.edu/items/d64d2338-4fe8-4687-b632-0df16045f6fe>.

border areas and prevent future conflicts, stronger bilateral coordination mechanisms, transparency in border surveys, and joint commitment to respect the agreements that have been made in order to maintain sovereignty and territorial integrity of each country.¹²

B. Legal Consequences of Moving Boundary Markers for the Border Areas of the Two Countries

Historically and juridically, the determination of Indonesia-Malaysia territorial boundaries is based on the legacy of the colonial treaties between the Netherlands and Britain which were formulated in several important treaties such as the 1891 Treaty of London, the 1915 treaty, and the 1928 treaty. These agreements were then used as the basis for the signing of a Memorandum of Understanding (MoU) in 1973 by the two post-independence countries. The 1973 MoU is a bilaterally binding product of international law and is an official reference in surveys and boundary line determination.¹³

However, in practice, the implementation of the 1973 MoU faces various obstacles, both technical and political. Although most boundaries have been mapped and defined, there are still some critical points referred to as Outstanding Boundary Problems (OBPs), which have not yet been agreed upon. In this context, the unilateral removal of stakes by one of the countries—without going through a formal negotiation process and mutual agreement—can be classified as a violation of international law and a violation of the principles of *pacta sunt servanda*.¹⁴ The legal consequences of such actions are complex and multidimensional. First, from the aspect of international law, the removal of stakes without a formal agreement can be considered a violation of the principle of non-intervention and the principle of respect for the territorial integrity of other countries. This can give rise to the country's responsibility internationally, both in the form of diplomatic responses, requests for clarification, and escalation to international arbitration forums if not resolved bilaterally.¹⁵ Second, from the aspect of national law, the removal of stakes has a direct impact on the sovereignty and legal jurisdiction of a country over its territory. This includes aspects of security defense, law enforcement, and protection of citizens living in border areas, in the case of the removal of stakes on Sebatik Island, there are real losses where a number of Indonesians lose land, and even access to government facilities enters Malaysian territory, which forces citizens to act as illegal immigrants in their own homeland.¹⁶

Third, from the aspect of diplomatic relations, this kind of unilateral action has the potential to damage the trust and stability of bilateral relations. This can trigger political tensions, slow down the process of cross-border cooperation, and even create vulnerability to provocations or open conflicts if not handled appropriately. This shows that the determination and management of state borders is a strategic issue that requires cross-sector coordination and firmness of foreign diplomacy,¹⁷ Thus, from Chapter III it can be said that

¹² Alfian Wanadi and Yusnarida Eka Nizmi, "Diplomasi Pertahanan Indonesia Dalam Mencapai Kesepakatan Segmen C500-C600 Dan Sungai Simantipal Dengan Malaysia," *Jurnal Online Mahasiswa Bidang Ilmu Sosial Dan Ilmu Politik* 9, no. 2 (2022): 1-10, <https://jom.unri.ac.id/index.php/JOMFSIP/article/view/33635>.

¹³ Ali Maksum, "Hubungan Bilateral Indonesia-Malaysia: Review Buku," *Indonesian Perspective* 1, no. 2 (2016): 177-84, <https://doi.org/10.14710/ip.v1i2.14292>.

¹⁴ Juni Suburi, *Kebijakan Pengelolaan Batas Antar Negara Di Kalimantan Dalam Konteks Menjaga Kedaulatan Wilayah NKRI, Dalam Mengelola Perbatasan Indonesia Di Dunia Tanpa Batas: Isu, Permasalahan Dan Pilihan Kebijakan* (Yogyakarta: Graha Ilmu, 2010), p. 77.

¹⁵ Josina Augustina Yvonne Wattimena, "Urgency Of Boundary Maritime Management, Strategies Prevent Conflicts," *Indonesian Journal of International Law* 15, no. 1 (2017): 29-46, <https://doi.org/10.17304/ijil.vol15.1.740>.

¹⁶ Autin Christani Suitela, Lucia Charlota Octovina Tahamata, and Wilshen Leatemia, "Pengawasan Pada Wilayah Perbatasan Negara Menurut Hukum Internasional," *TATOHI: Jurnal Ilmu Hukum* 4, no. 2 (2024): 92-99, <https://doi.org/10.47268/tatohi.v4i2.2125>.

¹⁷ Jawahir Thontowi, "Hukum Dan Diplomasi Lokal Sebagai Wujud Pemecahan Masalah Di Wilayah Perbatasan Kalimantan Dan Malaysia," *Yuridika* 30, no. 3 (2025): 426-456, <https://doi.org/10.20473/ydk.v30i3.1951>.

the removal of boundary markers carried out without a valid legal basis and without bilateral agreement between Indonesia and Malaysia can result in serious legal consequences both at the international and domestic levels. This transfer not only harms the principles of international law regarding the territorial integrity of the country, but also threatens national security, creates legal uncertainty for border communities, and disturbs the harmony of bilateral relations between the two countries,¹⁸ To prevent these impacts, a joint commitment is needed to continue border negotiations through agreed mechanisms, such as the Joint Technical Committee and the General Border Committee (GBC), as well as strengthen national legal instruments that can protect the country's territorial sovereignty. Diplomatic, political, technical, and legal approaches need to be combined synergistically so that border arrangements take place peacefully, fairly, and sustainably in order to maintain the integrity of the Republic of Indonesia and good relations with neighboring countries.

CONCLUSION

The transfer of boundary markers between countries that have been agreed through bilateral agreements, such as between Indonesia and Malaysia, is an act that violates the principles of sovereignty and international law. The territorial boundaries of countries are established through legal treaties, such as the 1891 Treaty of London and the 1973 MoU, which are legally binding. Therefore, any changes to the position of the boundary peg must be based on mutual agreement and through an agreed legal mechanism. Unilateral removal of stakes can lead to a variety of serious legal consequences, including the loss of national territory, disruption of the rights of border communities, and potential bilateral conflicts. Such actions also have the potential to worsen diplomatic relations and create tensions in the border areas, in order to maintain territorial sovereignty and protect the rights of border communities, the Indonesian government needs to take decisive and coordinated action in resolving border disputes with Malaysia. This research provides a legal basis and policy recommendations to achieve these goals.

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¹⁸ Purnawan Basundoro, "Pulau Sebatik Sebagai Pintu Kecil Hubungan Indonesia-Malaysia," *Literasi: Urnal Ilmu - Ilmu Humaniora* 3, no. 2 (2013): 133-43.

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